

EXHIBIT D

4. ABA represents over 2,100 member companies operating in over 2,500 locations. ABA's core members are key participants in their communities' local economy and culture. To assist them, ABA provides education, information dissemination, business products, and services; creates relevant programs; and engages in public policy, industry, and local-first advocacy.

5. The ABA has 156 members located in Texas who are vendors to school districts subject to the Ban.

6. Our members each utilize different systems for tracking their sales and inventory, and thus have different sets of records. Many of our members do not have complete records of all sales they have ever made to school districts. As a result, they are unable to comply with the requirements of House Bill 900 (the "Book Ban").

7. The Book Ban places an extreme burden on booksellers to rate books for their sexual content. It is impossible for any bookseller or bookstore owner to know the contents of every book they sell or have sold, making the law impossible for any bookstore to follow. Over four million new books were published in 2022, according to numerous sources. Fear of inadvertently running afoul of the law would result in a bookseller erring on the side of caution, thereby limiting students' access to age-appropriate, relevant materials.

8. Importantly, the rating is not just for the book as a whole. The Book Ban requires a bookseller to review every page of every book for any description of genitals, buttocks or breasts or any description of mild sexual activity. As a result, booksellers will need to do much more than review a handful of sexual health books or prominent biographies or fiction by people who are known for writing about sexual topics—they will have to comb through every page of every book.

9. The Book Ban's vague standards would also make it difficult for booksellers to comply with the rating system's criteria. The rating must be based on sexual content, but also on

contemporary standards of decency as to minors (this is the difference between sexually explicit and sexually relevant). The community standard is entirely undefined and subjective—forcing vendors to guess what a community thinks is appropriate for minors.

10. The Book Ban also fails to distinguish between minors based on age (5- versus 17-year-olds), maturity (advanced reader versus academically challenged reader) or geographic location (Houston versus Wichita Falls).

11. Concerns over this subjectivity would lead booksellers to err on the side of caution, ultimately labeling a book as “sexually explicit” or “sexually relevant” that may not need this rating. This could ultimately deprive students of age-appropriate works of literature. Just as an example, these titles could include *Dracula*, *Romeo & Juliet*, *Ulysses*, *Gone with the Wind*, and *The Color Purple*.

12. Additionally, due to the vagueness of the law, the Book Ban could result in the banning of a book that is “sexually relevant” as to younger minors but appropriate for older teenagers. What is appropriate to a 15-year-old may not be appropriate for a child under the age of 10. This law does not discern these nuances, and it places the onus on booksellers to make this impossible determination.

13. The lack of specificity in the Book Ban will inevitably lead to inconsistent ratings among our members and the broader bookselling community. It could also lead to financial liability from authors unhappy with their rating, who may place blame on booksellers for lost sales.

14. Our members do not believe that they are best positioned to evaluate every book for school use. They believe these decisions are best left to experienced, professional librarians, with parental input.

15. Our members do not wish to participate in a public rating system that compels them to rate books on criteria with which they do not agree. They are concerned that these ratings—which are compelled by the State but published under their name—would be interpreted as their own speech.

16. Our members believe these ratings are inherently subjective. The Book Ban’s requirement that the ratings be listed online could lead to classic or award-winning books, such as *The Bluest Eye* or *The Color Purple*, being branded with a proverbial Scarlet letter. It is not a stretch to imagine that a book being label as “sexually explicit” or “sexually relevant” on the TEA’s website could impact whether a parent buys a book at a bookstore for their child, thereby limiting access to titles that could be a positive influence on, and potentially life-changing for, a given child.

17. Further, because videos and movies that are based on books, like Academy Award-winning *Gone with the Wind*, are often shown in public school classrooms, it is also likely that the ratings provided to these books may foreclose their availability in the library, even while the movie version is still shown in the classroom—creating inconsistent treatment of similar content.

18. Our members believe the State has no business determining what books are acceptable for anyone to read. It is simply Orwellian for the State to do so. Our members further believe the impact of these ratings will not only affect what books are available in schools, but also extend into what books are sold in bookstores.

19. The Book Ban will undoubtedly lead to financial harm for our members, whether it is due to a loss of book sales, potential exposure to liability from book authors, or because bookstores need to hire additional staff to handle the burdensome responsibility of rating books sold to schools. The average net operating profit of an independent bookstore (as reported in

ABA's annual financial survey) from book sales in 2023 was 1.5 percent. Moreover, book prices are set by the publishers and printed on the books. If bookstore expenses increase, a bookstore owner cannot increase the price of books to offset this new expense.

20. Our members do not yet know the extent of the labor and resources that will be necessary to handle rating the books due to the vagueness of the law. It is conceivable that attempting to comply with the law will put a bookstore out of business. Aside from being unconstitutional, this law is impractical and burdensome for bookstore businesses and will result in a loss of net income.

21. Our members are also unclear what is required regarding recalling certain books. The law does not make clear their responsibilities nor what they are required to do if a school does not comply with such a recall. There are significant questions as to how the books that are recalled will be handled and what further burdens this could place on a bookstore.

22. Our members are also concerned that the issuance of a recall would be interpreted by school districts and the general public as an expression of the bookseller's views and values, when its speech is actually being compelled by the government.

23. It is impossible to overstate the importance of local businesses, such as independent bookstores, to their communities. In economic terms, according to a civic economics study, independent businesses recirculate a substantially greater proportion of their revenues back into the local economy than do their chain competitors.

24. I hereby declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed this 23rd day of July, 2023.

/s/ David Grogan
David Grogan